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6	Attorney for Plaintiff, TROY COVEY,	
7	,	
8	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA	
9	TROY COVEY	Case No. 23-cv-1794
10	Plaintiff,	COMPLAINT FOR DAMAGES AND
11	v.	INJUNCTIVE RELIEF
<ul><li>12</li><li>13</li></ul>	BIOLUMIN INC., d/b/a Biovaj; and DOES 1 through 10 inclusive,	(1) COPYRIGHT INFRINGEMENT
14	Defendant.	DEMAND FOR JURY TRIAL
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16		
17	Plaintiff, Troy Covey alleges as follows:	
18	JURISDICTION AND VENUE	
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20		
21	copyright infringement under the Copyright Act of the United States, 17 U.S.C. §	
22	101 et seq.	
	2. This Court has subject matter jurisdiction over Plaintiff's claims for	
23	copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).	
24	3. This Court has personal juri	sdiction over Defendant because Defendant

25 conducts business and/or resides within this judicial district, Defendant's acts of infringement complained of herein occurred in this judicial district, and Defendant 27 coursed injury to Plaintiff within this judicial district.

caused injury to Plaintiff within this judicial district.

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4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and

1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant resides and has a regular and established place of business in this judicial district.

### **PARTIES**

- 5. Plaintiff Troy Covey ("Covey") is an individual and professional photographer.
- 6. Defendant Biolumin Inc. d/b/a Biovaj ("Defendant") is a California corporation with a principal place of business in Newport Beach, California.
- 7. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, "Defendant" shall mean all named Defendants and all fictitiously named Defendants.
- 8. For the purposes of this Complaint, unless otherwise indicated, "Defendant" includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of the Defendants named in this caption.

## **FACTUAL ALLEGATIONS**

## Plaintiff Troy Covey Is A Professional Photographer

- 9. Troy Covey is a successful commercial beauty photographer.
- 10. Covey's client list includes Lune + Aster, Briogeo, Clinque, Target, Peloton, Versed Skincare, e.l.f., and *SHAPE Magazine*.
  - 11. A portfolio of Covey's work is available for viewing by general public

through his website www.troycovey.com. 1 2 12. Covey is the sole creator and exclusive rights holder to a beauty photograph of model Alecia Rodriguez ("Rodriguez Image"). 3 Attached hereto as Exhibit A is a true and correct copy of the 4 Rodriguez Image. 5 14. Covey has registered the Rodriguez Image with the United States 6 7 Copyright Office under registration VAu 1-388-463 Covey is the sole creator and exclusive rights holder to a beauty 15. 8 photograph of model Hailey Elizabeth Rose ("Rose Image"). 9 16. Attached hereto as Exhibit B is a true and correct copy of the Rose 10 11 Image. Covey has registered the Rose Image with the United States Copyright 12 17. 13 Office under registration number VAu 1-388-466. 14 18. 15

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## Defendant Biolumin Inc is a commercial business with online marketing

- According to its website, Biolumin Inc d/b/a Biovaj sells various, all natural skincare products. See www.biovaj.com.
- On information and belief, Defendant operates an Instagram page, 19. @biovaj, that promotes the Defendant's products ("Defendant's Instagram").

# Defendant's Infringing Conduct

- 20. On or about June 9, 2020, Covey discovered his Rodriguez Image and Rose Image (collectively, the "Beauty Images") on Defendant's Instagram, in posts promoting the Defendant's products ("Infringing Posts").
- True and correct screenshots of the Beauty Images being displayed with 21. the Infringing Posts are attached hereto as Exhibit C.
- 22. In the post featuring the Rodriguez Image, Defendant captioned the infringing post with "Shop now 35% Off @Amazon". See Exhibit C.
- Defendant tagged Plaintiff's personal 23. Additionally, Instagram, @troycovey, in the Infringing Posts.

- 24. Plaintiff made several attempts to resolve this claim with Defendant directly but was unable to do so.
- 25. Covey does not have record of the Beauty Images being licensed to Defendant nor had Covey granted permission for Defendant to make a copy or publicly display the Beauty Images on Defendant's Instagram with the Infringing Posts.
- 26. On information and belief, Defendant's use of the Beauty Images was deliberate and willful because it knew or should have known that it did not purchase a license to use the Beauty Images and Defendant tagged the Plaintiff in the Infringing Posts but made no attempt to properly license the Beauty Images from Plaintiff.

#### CAUSE OF ACTION COPYRIGHT INFRINGEMENT 17 U.S.C. § 101 *et seg*.

- 27. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Beauty Images.
- 28. Plaintiff is informed and believes and thereon alleges that the Defendant willfully infringed upon Plaintiff's copyrighted Beauty Images in violation of Title 17 of the U.S. Code, in that it used, published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Beauty Images of the Plaintiff without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.
- 29. Specifically, Defendant made unauthorized copies and then publicly displayed the Beauty Images with the Infringing Posts on Defendant's Instagram.
- 30. As a result of Defendants' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory

damages in an amount up to \$150,000.00 if willful or up to \$30,000 if unintentional 1 2 pursuant to 17 U.S.C. § 504(c). Plaintiff is also entitled to injunctive relief to prevent or restrain 31. 3 infringement of her copyright pursuant to 17 U.S.C. § 502. 4 5 PRAYER FOR RELIEF 6 WHEREFORE, Plaintiff prays for judgment against Defendant as follows: 7 For an award of actual damages and disgorgement of all of Defendant's 8 profits attributable to the infringement as provided by 17 U.S.C. § 504 in an amount 9 to be proven or, in the alternative, at Plaintiff's election, an award for statutory 10 damages against Defendant in an amount up to \$150,000.00 for each infringement 11 pursuant to 17 U.S.C. § 504(c), whichever is larger; 12 13 For costs of litigation and reasonable attorney's fees against each Defendant pursuant to 17 U.S.C. § 505; 14 For an injunction preventing each Defendant from further infringement of all 15 copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; 16 For pre judgment interest as permitted by law; and 17 For any other relief the Court deems just and proper. 18 19 20 Respectfully submitted, Dated: March 9, 23 21 /s/ Mathew K. Higbee 22 Cal. Bar No. 241380 23 1504 Brookhollow Dr., Ste 112 Santa Ana, CA 92705-5418 24 714) 597-6559 facsimile 25 Counsel for Plaintiff 26 27 28

**DEMAND FOR JURY TRIAL** Plaintiff, Troy Covey hereby demands a trial by jury in the above matter. Respectfully submitted, Dated: March 9, 2023 /s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
Cal. Bar No. 241380
HIGBEE & ASSOCIATES 1504 Brookhollow Dr., Ste 112 Santa Ana, CA 92705-5418 (714) 617-8373 (714) 597-6559 facsimile Counsel for Plaintiff